(18,465.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 282.

ANTON JOHANSON, PLAINTIFF IN ERROR,

vs.

THE STATE OF WASHINGTON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 22, 1902.

a No. 3670.

Filed July 10, 1900. C. S. Reinhart, Clerk, by R. B. Crandall, Deputy.

b THE STATE OF WASHINGTON, Plaintiff, Respondent,
vs.
ANTON JOHANSON, Defendant, Appellant. } No. 27377.

Appeal from the superior court of King county to the supreme court of the State of Washington.

1 In the Superior Court of the State of Washington in and for King County.

THE STATE OF WASHINGTON, Plaintiff,
vs.
ANTON JOHANSON, Defendant. } Summons.

State of Washington to the said Anton Johnson, above-named defendant, Greeting:

You are hereby summoned and required to appear within twenty days after the date of the service of this summoned upon you, exclusive of the day of such service and answer the complaint and defend the above-entitled action in the above-entitled court and to serve a copy of your answer or other pleading upon P. H. Winston, attorney general or Thos M. Vance assistant attorney general, attorneys for plaintiff at their post-office address hereinbelow stated and in case of your failure so to do, judgment will be rendered against you according to the demand of the complaint, a copy of which is herewith served upon you.

Dated this 24 day of May, 1899.

P. H. WINSTON,
Attorney General,
By THOS. M. VANCE,
Assistant Attorney General,
Attorneys for Plaintiff.

Post-office address Spokane Washington, Olympia Washington.

2 In the Superior Court of the State of Washington in and for the County of King.

THE STATE OF WASHINGTON, Plaintiff,
vs.
ANTON JOHANSON, Defendant. } No. —. Complaint.

The plaintiff complains and alleges:

I.

That on the 12th day of March, 1893 it was seized in fee and possessed and entitled to the possession of that certain tract of land

situated in the county of King, State of Washington, described as follows, to wit:

The north half (N. ½) of the southwest quarter (S. W. ¼) and the northwest quarter (N. W. ¼) of the southeast (S. E. ¼) quarter of section three (3) of township twenty-five (25) north of range four (4) east which said land is of the value of twenty thousand ($20,000.00) dollars.

II.

That while said plaintiff was so possessed the defendant on the 12th day of March, 1893, and without right or title entered into possession of the *defendant* premises and ousted and ejected the plaintiff therefrom and now unlawfully retains the possession thereof from the plaintiff to its damage in the sum of one hundred ($100.00) dollars.

3

III.

That the value of the rents, issues and profits of said premises from the said 13th day of March, 1893, and all the plaintiff has been entitled to therefrom in one hundred ($100.00) dollars.

Wherefore plaintiff prays judgment against the defendant for the recovery of the possession of the defended premises.

2. For the sum of one hundred ($100.00) dollars the value of the rents, issues and profits thereof and the costs of this suit.

THOS. M. VANCE,
Attorney for Plaintiff.

4 STATE OF WASHINGTON, } ss:
County of Thurston, }

Thos. M. Vance being duly sworn, upon oath deposes and says that he is assistant attorney general of the State of Washington; that he has read the foregoing complaint knows the contents thereof and believes the same to be true.

THOS. M. VANCE.

Subscribed and sworn to before me this 27 day of June, 1899.

C. W. CORLISS,
Notary Public in and for the State of Washington,
Residing at Seattle, Wash.

I, Thos. M. Vance one of the attorneys for the plaintiff, do hereby certify that the within and foregoing are true and correct copies of the original complaint and summons herein.

Dated this — day of ——, 1898.

THOS. M. VANCE,
Assistant Attorney General, One of the
Attorneys for the Plaintiff.

Filed Jul- 10 1899.
GEO. M. HOLLOWAY, *Clerk.*

Received a copy of the within summons and complaint this 27 day of June, 1899 and hereby appear in said cause for defendant Anton Johanson.

CORLISS & McKAY,
Att'ys for Defendant.

5 In the Superior Court of the State of Washington in and for King County.

THE STATE OF WASHINGTON, Plaintiff,
vs.
ANTON JOHANSON, Defendant. } No. 27377. Answer.

The defendant for answer to the complaint herein

I.

Denies the allegations made in paragraph I of the complaint.

II.

Denies the allegations made in paragraph II of the complaint.

III.

Denies the allegations made in paragraph III of the complaint.

Wherefore the defendant prays judgment that the action be dismissed and that he recover his costs and disbursements to be taxed.

CORLISS & McKAY,
Attorneys for Defendant,
317 *Bailey Building, Seattle, Wash.*

6 STATE OF WASHINGTON, } *ss:*
County of King, }

Anton Johanson being first duly sworn, on oath deposes and says: That he is the defendant in the above-entitled action; that he has heard read the foregoing answer, knows the contents thereof and verily believes the same to be true.

ANTON JOHANSON.

Subscribed and sworn to before me this 26th day of July, 1899.

ROB'T J. FISHER,
Notary Public in and for the State of Washington,
Residing at Seattle.

Service of a copy of the within answer admitted this 27th day of July, 1899.

THOS. M. VANCE,
Att'y for Plaintiff.

Filed Sep. 25, 1899.

GEO. M. HALLOWAY, *Clerk.*

7 In the Superior Court of the State of Washington in and for King County.

STATE OF WASHINGTON, Plaintiff,
vs.
ANTON JOHANSON, Defendant. } Findings and Decree.

This cause coming on regularly to be heard plaintiff being represented by T. M. Vance and defendant being represented by Corliss a McKay a jury having been waived by a stipulation signed by the parties hereto and the cause having been submitted to the court upon an agreed statement of facts contained in a stipulation signed by the parties to this cause. The cause having been submitted to the court for its decision, the court now finds the following facts:

1. That the north half of the southwest quarter and the northwest quarter of the southwest quarter of section 3 township 25 north range 4 east is of the value of twenty thousand dollars and was selected by Phillip H. Lewis as agent for King county, Washington Territory, by filing a list of this and other lands designated as list No. 2 of indemnity school selection at the land office at Olympia Washington Territory May 24th, 1870, under an act of Congress approved March 2nd, 1853, and an act of Congress approved February 26th 1859 which said selection was approved by Secretary C. Delano January 27th, 1872.

2. March 13th, 1893, Anton Johanson made application to enter the land aforesaid under the homestead laws, and at that time made a settlement thereon; he has ever since lived on said land, his application was rejected by the local land office and subsequently

8 appealed to the Commissioner of the General Land Office, and finally to the Secretary of the Interior who on December 18th, 1895, decided adversely to Anton Johanson.

From the foregoing facts the court finds as conclusions of law:

1. That the plaintiff was on the 13th day of March, 1893, seized in fee, and possessed and entitled to the possession to, said north half of the southwest quarter and the northwest quarter of the southeast quarter section 3 township 25 north range 4 east.

2. That on the said 13th day of March, 1893, defendant unlawfully entered said premises and ejected the plaintiff therefrom, and unlawfully retains possession thereof.

To each of the foregoing conclusions of law defendant excepted which exceptions were allowed.

Wherefore by virtue of the law and by reason of the premises aforesaid it is ordered, adjudged and decreed that plaintiff have and recover of defendant the possession of the aforesaid premises, together with his costs taxed at $—.

Dated this 21st day of April 1900.

WM. HICKMAN MOORE, *Judge.*

Filed Apr. 21 1900.

GEO. M. HOLLOWAY, *Clerk.*

9 In the Superior Court of the State of Washington in and for King County.

STATE OF WASHINGTON, Plaintiff,
vs.
ANTON JOHANSON, Defendant. } Exceptions.

1.

Defendant excepts to all and every part of the conclusions of law number one on the ground that the same is contrary to the law and the evidence herein.

2.

Defendant excepts to all and every part of the conclusions of law number two on the ground that the same is contrary to the law and evidence herein.

The foregoing exceptions allowed this 21st day of April, 1900.

WM. HICKMAN MOORE, *Judge.*

Filed Apr. 21 1900.
GEO. M. HOLLOWAY, *Clerk.*

10 In the Superior Court of the State of Washington for the County of King.

STATE OF WASHINGTON
vs.
ANTON JOHANSON.

APRIL 21ST, 1900.

Findings and decree signed. Exceptions signed.

At the time of signing said findings and decree, the defendant gives notice in open court that he appeals from said decree and every part thereof to the supreme court of the State of Washington.

WM. HICKMAN MOORE, *Judge.*

10½ In the Superior Court of the State of Washington for King County.

THE STATE OF WASHINGTON, Plaintiff,
vs.
ANTON JOHANSON, Defendant. } No. —. Appeal Bond (Civil).

STATE OF WASHINGTON,
County of King, } *ss:*

Know all men by these presents: that we, Anton Johanson as principal and Gust Eckloff and H. Stillson as sureties are held and firmly bound unto the State of Washington in the penal sum of two hundred and fifty dollars for the payment of which sum, well and truly to be made, we do bind ourselves and each of our heirs, executors and administrators, jointly and severally firmly by these presents:

The condition of the foregoing obligatian is such that whereas on the — day of April, A. D. 1900 in the above-named court, the above-bounden principal gave due notice of appeal to the supreme court of the State of Washington from the judgment rendered in favor of plaintiff by the superior court of King county, State of Washington in the above-entitled cause therein pending and desires to stay proceedings under said judgment until the determination of said appeal therefrom

Now therefore if the said Anton Johanson shall pay to the above-named plaintiff all costs and damages that shall be adjudged against him on said appeal, and shall satisfy and perform the judgment appealed from in case it shall be affirmed and any judgment
11 or order which the supreme court may render or order to be rendered by said superior court not exceeding in amount the sum of two hundred and fifty dollars then this obligation shall become void, otherwise it shall remain in full force and effect.

ANTON JOHANSON, *Principal.*
GAST ECKLAFF, [SEAL.]
H. STILLSON, *Sureties.* [SEAL.]

STATE OF WASHINGTON, } ss:
County of King, }

H. Stillson and Gust Ecklaff being first duly sworn each for himself on oath says: I am a resident of the State of Washington I am not a counsellor or attorney at law, sheriff, clerk of the superior court or other officer of such court, and am worth the sum of five hundred dollars over and above all debts and liabilities, and exclusive of property exempt from execution.

GUST ECKLAFF.
H. STILLSON.

Subscribed and sworn to before me this 16th day of April, 1900.

C. W. CORLISS,
Notary Public in and for Washington, Residing at Seattle.

Filed Apr. 24, 1900.
GEO. M. HOLLOWAY, *Clerk.*

Received copy of the within bond this 16th day of April 1900 at Olympia W'n.

THOS. M. VANCE,
Ass't Att'y Gen.

12 STATE OF WASHINGTON, } ss:
County of King, }

I, Geo. M. Holloway, county clerk of King county and *ex officio* clerk of the superior court of the State of Washington, for the county of King, do hereby certify that the foregoing is a true and correct transcript of so much of the record in cause No. 27377, as I am required by appellant to transmit to the supreme court on appeal.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 15th day of June, A. D. 1900.

[Seal of the Superior Court of King County.]

GEO. M. HOLLOWAY, *Clerk*,
By A. F. RAYMOND,
Deputy Clerk.

Cancelled inter. revenue stamp.

13 THE STATE OF WASHINGTON, Respondent, vs. ANTON JOHANSON, Appellant. } No. 3670. Filed Dec. 19, 1901.

This was an action brought by the State of Washington to recover from the appellant the possession of a certain tract of land lying in King county. In its complaint the State alleges in substance that it is seized in fee, entitled to the possession, and was on the 12th day of March, 1893, in possession, of the land in controversy, and that the appellant, on the date named, without right or title, entered into the possession of the land, ousted the State therefrom, and unlawfully retains possession thereof. The answer is a general denial. At the trial the facts were stipulated, and appear in the findings of fact made by the trial court. These findings are as follows:

"1. That the north half of the southwest quarter and the northwest quarter of the southwest quarter of section 3 township 25 north range 4 east is of the value of twenty thousand dollars and was selected by Phillip H. Lewis as agent for King county, Washington Territory by filing a list of this and other lands designated as list No. 2 of indemnity school selection at the land office at Olympia Washington Territory May 24th, 1870 under an act of Congress approved March 2nd, 1853 and an act of Congress approved February 26th 1859 which said selection was approved by Secretary C. Delano January 27th, 1872.

2. March 13th, 1893 Anton Johanson made application to enter the land aforesaid under the homestead laws, and at that time made a settlement thereon; he has ever since lived on said land, his application was rejected by the local land office and subsequently appealed to the Commissioner of the General Land Office, and finally to the Secretary of the Interior who on December 18th, 1895 decided adversely to Anton Johanson."

The sole question presented by the record therefore is, has the State such title to the lands in controversy as will enable it to recover possession from one who has entered into its possession without right. And in considering this question, it must be borne in mind

14 that in this State it is not an essential prerequisite to the right of recovery in this form of action that the claimant show a legal title. While the action is in form assimilated to the old action of ejectment, it is in its nature a statutory action, in which the rights of the respective claimants, both legal and equitable are tried and determined, and the superior title, whether legal or equitable, is allowed to prevail. (Ballinger's Code, sec. 5500, 5508.)

The State asserts title to the land under the several acts of Congress reserving for its use, and granting to it, certain parts, of the public domain for the support of its common schools. The first of these is found in the act creating the Territory of Washington. 10 Stat. p. 172. By section 20 of that act, it is provided:

"That when the land in said Territory shall be surveyed under the direction of the Government of the United States, preparatory to bringing the same into market or otherwise disposing thereof, sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same are hereby, reserved for the purpose of being applied to common schools in said Territory. And in all cases where said sections sixteen and thirty-six, or either or any of them, shall be occupied by actual settlers prior to survey thereof, the county commissioners of the counties in which said sections so occupied as aforesaid are situated, be, and they are hereby, authorized to locate other lands to an equal amount in sections, or fractional sections, as the case may be, within their respective counties, in lieu of said sections so occupied as aforesaid."

The next is the act of February 26, 1859; 11 Stat. p. 285. That act was applicable to all of the Territories. It enacted that where settlements were made with a view to pre-emption upon the public lands in advance of the surveys which should be found to have been made upon sections 16 or 36, such lands should be subject to the pre-emption claims of the settlers; and that other lands of like quality should be reserved for the use of the common schools, to be selected "in accordance with the principles of adjustment and the provisions of the act of Congress of May 20th, 1826." Lastly, by act of February 22, 1889, enabling the people of the Territory of Washington to form a constitution and State government, "and to be admitted into the Union on an equal footing with the original States."

By the 10th section of the latter act, it is provided:

"That upon the admission of each of said States into the Union, sections numbered sixteen and thirty-six in every township of said proposed States, and where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said States for the support of common schools, such indemnity lands to be selected within said States in such manner as the legislature may provide, with the approval of the Secretary of the Interior: Provided, that the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this act, nor shall any lands embraced in Indian, military, or other reservations of any character be subject to the grants or to the indemnity provisions of this act, until the reservation shall have been extinguished and such lands be restored to and become a part of the public domain."

And by section 4 of the act it was provided that the convention

elected to frame a constitution, should provide, by ordinance, irrevocable without the consent of the United States and the people of the State, that provision be made for the establishment and maintenance of a system of public schools free from sectarian control, which should be open to all the children of the State. This requirement was complied with by making the provision a part of the fundamental law. Const. art. XXVI, sub. 4.

The contention of the appellant is that the acts of March 2, 1853, and February 26, 1859, did no more than reserve from entry under the land laws of the United States the several tracts of lands therein described, and, as the tenth section of the enabling act, granting lands to the State for the use of its common schools, described only sections 16 and 36 thereof, it was not intended that lands theretofore selected and reserved in lieu of lands lost by reason of settlements made prior to the extension of the surveys should pass to the State by virtue of the grant contained therein; and, hence, whether these selected lieu lands are still reserved from entry by qualified settlers under the existing laws of the United States, or whether they are a part of public domain subject to such entry, can make no difference in the result of this case, as the title to and consequent right of control thereof, is still within the United States, and the State has no such title, either legal or equitable, as will enable it to maintain an action to recover possession.

Looking for a moment to the history of these reservations for and grants of the public domain by the General Government for the use of the public schools, we find that the practice originated in the earliest times. It is said by the Supreme Court of the United States (Cooper *v.* Roberts, 18 How. 173) to be traceable to the ordinance of 1785, which is the first enactment for the disposal by sale of the public lands in the western territory. In that case the court after noticing the ordinance cited, said:

"The appropriation of public lands for that object became a fundamental principle, by the ordinance of 1787, which settled terms of compact between the people and States of the northwestern territory, and the original States, unalterable except by consent. * * * This principle was extended, first, by congressional enactment (1 Stats. at Large, 550, sec. 6.), and afterwards, in 1802, by compact between the United States and Georgia to the southwestern territory. The earliest development of this article in practical legislation, is to — found in the organization of the State of Ohio, and the adjustment of its civil polity, according to the ordinance, preparatory to its admission to the Union. Proposals were made to the inhabitants of the incipient State to become a sovereign community, and to accept certain articles as the conditions of union, which being accepted, were to become obligatory upon the United States. The first of these articles is, 'that the section No. 16 in every township, and when such section has been sold, granted, or disposed of, other lands equivalent thereto and most contiguous to the same, shall be granted to the inhabitants of such township, for the use of schools.'"

That the Government has steadily adhered to this policy, an examination of the several acts admitting States into the Union, will show.

But whether there can be found in the several acts of the Congress above cited relating to the Territory and State of Washington, a compact between the United States and the State "unalterable, except by consent," by which the State is entitled to a grant of the lands in controversy from the United States, if such grant was not made by the enabling act, may be doubted, yet it cannot be doubted that the purpose of such reservations was that the State might have, upon its admission into the Union, sections 16 and 36 of every township within
17 the boundaries of the State, or an equal quantity and quality of land in lieu thereof should it be found that the Government could not, for any reason, grant these particular sections to the State when the State should be so admitted. That it would not be able to grant these particular sections in their entirety, without doing an injustice to certain persons whom it invited and encouraged to move into the Territory, and settle upon the public lands therein, was known to Congress when it passed the act creating the Territory. It was known that such settlers would occupy these lands in advance of the surveys. The injustice of denying to a *bona fide* settler the right to acquire title to land he should so occupy and improve in ignorance of its true location, was so manifest that legislation was necessary for his protection. The purpose of these acts was thus two-fold; it was to protect actual *bona fide* settlers in their settlements, and to preserve to the States a fixed proportion of the public domain for the support of schools and means of education, which the founders of the Government had said "shall forever be encouraged." The conditions anticipated by Congress actually happened. Settlements were made upon the public domain within the Territory prior to the extension of the public surveys over it. Certain of these settlements were found to fall within sections 16 and 36, and the Government, recognizing the settler's prior rights, patented the land to the settler. In lieu of certain lands occupied and lost to the use of the common schools in this way, the board of county commissioners, pursuant to authority expressly granted them by Congress, selected the lands in controversy. This selection was, pursuant to the same authority, approved by the Secretary of the Interior. The lands so selected stood from that time, until the passage of the enabling act withdrawn from settlement, in the place and stead of lands which by that act would without any question have passed to the State under the descriptive terms used in section 10
18 thereof, had they not "been sold or otherwise disposed of."

Why, then, should it be held not to pass under the descriptive terms used in that section? There can be but one reason; namely, the one suggested by the appellant, they are not expressly mentioned. But this is not necessarily conclusive. These acts are public statutes, and are to be construed as such and not as private grants. It is not the rule that acts making grants of the public domain are always to be construed strictly against the grantee. As was said by Mr. Justice Field, in Winona & St. Peter R. R. Co. *v.* Barney, 113 U. S. 618, 625, the acts making grants "are to receive such construction as will carry out the intent of Congress, however difficult it might be to give full effect to the language used if the

grants were by instruments of private conveyance. To ascertain that intent we must look to the condition of the country when the acts were passed, as well as to the purpose declared on their face, and read all parts of them together." And especially is this true where the grant is made in pursuance of a fixed and settled policy of the Government, originated at its foundation, and believed then, and at all times since, to be a policy necessary to the perpetuation of the Government's very existence. Reading all of these acts together, there can be no mistake as to the intent of Congress. It intended these lands for the use of the common schools of the State, and intended to grant them to the State for that purpose when it passed the enabling act. Had it been otherwise, it would not in the first instance have provided for their selection and reservation; nor would it, when it passed the enabling act, have failed to make provision for their disposition, knowing, as it must have known, of their reservation and the purposes for which they were reserved. To contend otherwise is to contend that Congress did not intend to admit the State of Washington into the Union "on an equal footing with the original States." It is also to convict Congress
19 of being ignorant of the history and conditions of the subject-matter over which it was legislating. A reference to the title of the enabling act will show that the first is contrary to the purpose of Congress, and the second is contrary to the rule that ignorance of the status of the subject-matter over which it has legislated can never be imputed to a legislative body.

True these lands have never been patented to the State by the General Government, but such patent is unnecessary to pass the title. If the lands were included in the grant, the equitable title, at least, with the right of possession passed by the grant to the State, which is title sufficient, as we have shown, to enable the State to maintain an action to recover possession from any one intruding thereon.

We conclude, therefore, that the lands in controversy passed to the State by virtue of the grant contained in the enabling act, and that the judgment appealed from must stand affirmed. It is so ordered.

FULLERTON, *J.*

We concur:

REAVIS, *C. J.*
DUNBAR, *J.*
ANDERS, *J.*
WHITE, *J.*

20 In the Supreme Court of the State of Washington.

WEDNESDAY, *January* 29, 1902.

STATE OF WASHINGTON, Respondent,
v.
ANTON JOHANSON, Appellant. } No. 3670. Judgment.

This cause having been heretofore submitted to the court on the transcript of the record of the superior court of King county and upon the argument of counsel and the court having fully considered the same and being fully advised in the premises and having filed its opinion in writing, it is now on this 29th day of January, A. D. 1902, on motion of W. B. Stratton, Esquire, of counsel for respondent, considered, adjudged and decreed that the judgment of the said superior court be and the same is hereby affirmed with costs, and that the said State of Washington have and recover of and from the said Anton Johanson the costs of this action taxed and allowed at thirty-eight & 50/100 dollars, and that execution issue therefor. And it is further ordered that this cause be remitted to the said superior court for further proceedings in accordance with the opinion herein filed.

21 In the Supreme Court of the State of Washington.

THE STATE OF WASHINGTON, Plaintiff and Respondent,
vs.
ANTON JOHANSON, Defendant and Appellant. } Petition for the Allowance of Writ of Error.

To the Honorable James B. Reavis, chief justice of the supreme court of the State of Washington:

Now comes Anton Johanson, the above-named defendant and appellant in this court and petitions the honorable chief justice of this court for an allowance of a writ of error from the Supreme Court of the United States to this court to bring up for review by the Supreme Court of the United States, the judgment of this court in the above-entitled cause, rendered and entered herein under date of December the 19th, 1901; whereby this court adjudged and directed that the judgment of the superior court of King county in said cause must be affirmed and for an order fixing the amount of the security to be filed; that the plaintiff in error, said Anton Johanson, shall prosecute his said writ of error to effect and if he fail to make his plea good, shall answer all damages and costs and for the allowance of the citation to the adverse party upon the filing of such writ of error in this court and upon the approval and filing of such security in pursuance of the statute of the United States in such case made and approved.

This petition is based upon the fact that in this cause a title, right and privilege are claimed under the Constitution of the United States and the statutes thereof and under the authority exercised under the United States and the decision in said judgment of the supreme court of the State of Washington herein is against such title, right and privilege specially set up and claimed
22 by this petitioner under said Constitution and the statutes and authority exercised under the United States and your petitioner will ever pray, etc.

Dated this 13th day of January, 1902.

C. W. CORLISS,
Attorneys for Anton Johanson, Defendant and Appellant in this Court.
JNO. F. MAIN, *Of Counsel.*

Endorsement: No. 3670. Supreme court of the State of Washington. The State of Washington, *vs.* Anton Johanson. Petition for the allowance of writ of error. C. W. Corliss, attorney for defendant and appellant. Office address: 409 Burke bldg. Seattle, Washington. Service of the within paper on the undersigned, this 13th day of January, 1902, is hereby admitted. W. B. Stratton attorney general by C. C. Dalton ass't attorney general attorney for State of Washington. Filed Jan. 29 1902. C. S. Reinhart, clerk

23 In the Supreme Court of the State of Washington.

THE STATE OF WASHINGTON, Plaintiff and Respondent, *vs.* ANTON JOHANSON, Defendant and Appellant.	Assignment of Errors.

October term, in the year of our Lord one thousand nine hundred and two.

Afterwards, to wit: on the first Monday of October in this same term before the justices of the Supreme Court of the United States at the Capitol in the city of Washington, came the said Anton Johanson by C. W. Corliss, his attorney, and says:

1. That in the record and proceedings aforesaid there is manifest error in this, to wit: that — the declaration aforesaid, items therein contained are not sufficient in law in the said State of Washington to have maintained its aforesaid action thereof against the said Anton Johanson.

2. See next page.

3. There is also error in this, to wit: that by the record aforesaid it appears that the decree aforesaid — given for the said State of Washington, against the said Anton Johanson, whereas, by the law of the land, the said decree sought to have been given for the State of Washington against the said Anton Johanson, ought to have been

given for the said Anton Johanson, against the said State of Washington, and the said Anton Johanson prays that decree aforesaid may be reversed, annulled and altogether held for nothing and that he may be restored to all things which he has lost by action of the said decree.

24 There is manifest error in this, to wit:

That by said record and proceedings it appears that said judgment was given against the said Anton Johanson, plaintiff in error, and against the title, right, privilege and immunity specially set up and claimed by said plaintiff in error under the Constitution, statutes and authority of the United States.

C. W. CORLISS,
Attorney for Defendant and Appellant.
JNO. F. MAIN, *Of Counsel.*

Endorsement: No. 3670. Supreme court of the State of Washington. The State of Washington, *vs.* Anton Johanson. Assignment of errors. C. W. Corliss, attorney for defendant and appellant. Office address: 409 Burke bldg., Seattle, Washington. Service of the within paper on the undersigned, this 13th day of January, 1902, is hereby admitted. W. B. Stratton, attorney general, by C. C. Dalton, ass't att'y general attorney for State of Washington. Filed Jan. 29 1902 C. S. Reinhart, clerk.

25 In the Supreme Court of the State of Washington.

THE STATE OF WASHINGTON, Plaintiff and Respondent,
vs.
ANTON JOHANSON, Defendant and Appellant.
} Order Allowing Writ of Error.

This 17th day of January, A. D., 1902, came the defendant and appellant by his attorney and filed herein and presented to the court his petition praying for the allowance of the writ of error mentioned to be urged by him. Praying also that a transcript of the record and proceedings and papers upon which the decree herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States and that such other and further proceedings may be had as may be proper in the premises.

In consideration whereof, the court does allow the writ of error upon the defendant and appellant, giving bond, according to the law, in the sum of five hundred dollars, which shall operate as a supersedeas bond.

Done at Olympia in the State of Washington, this 17th day of January, 1902.

JAMES B. REAVIS,
Chief Justice of the Supreme Court of the State of Washington.

26 STATE OF WASHINGTON, } ss:
County of Thurston, }

I, C. S. Reinhart, clerk of the supreme court of the State of Washington, do hereby certify that the above and foregoing is a true and correct copy of the order of the chief justice in the above-entitled cause.

Made and entered on this — day of January, 1902.

In witness whereof I have hereunto set my hand this — day of January, A. D., 1902, and affixed the seal of this court.

—— ——, *Clerk.*

Endorsement: No. 3670. Supreme court of the State of Washington. The State of Washington *vs.* Anton Johanson. Order allowing writ of error. C. W. Corliss, attorney for defendant and appellant. Office address: 409 Burke bldg., Seattle, Washington. Service of the within paper on the undersigned, this 13th day of January, 1902, is hereby admitted. W. B. Stratton attorney general by C. C. Dalton ass't att'y gen'l. Attorney for State of Washington. Filed Jan. 29 1902. C. S. Reinhart, clerk.

27 In the Supreme Court of the State of Washington.

THE STATE OF WASHINGTON, Plaintiff and Respondent,
vs.
ANTON JOHANSON, Defendant and Appellant.
} Bond for Writ of Error.

Know all men, that we, Anton Johanson, as principal and —— —— and United States Fidelity & Guaranty Co. as sureties, are held and firmly bound unto the plaintiff, State of Washington, in the full and just sum of five hundred dollars, to be paid to said plaintiff, State of Washington, its certain attorneys, executors, administrators, assigns, to which payment well and truly to be made we bind ourselves our heirs, executors, administrators, and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 25 day of January, in the year of our Lord, one thousand nine hundred and two.

Whereas, lately at a term of the supreme court of the State of Washington in a suit pending in said court, between The State of Washington, plaintiff and respondent, and Anton Johanson, defendant and appellant, a decree was rendered against the said Anton Johanson and the said Anton Johanson, having obtained a writ of error and filed a copy thereof in the clerk's office of said court, to reverse the decree in the aforesaid suit and a citation directed to the said State of Washington, citing and admonishing it to be and appear at a session of the Supreme Court of the United States, to be
28 held in the city of Washington, D. C., on the — day of —— next.

Now, the condition of the above obligation is such that if the said Anton Johanson shall prosecute said writ of error to effect

and answer all damages and costs if he failed to make this said plea good, then the above obligation to be void, else to remain in full force and virtue.

ANTON JOHANSON. [SEAL.]
[SEAL.] UNITED STATES FIDELITY & GUARANTY CO., [SEAL.]
By H. CHENEY AND
JAMES B. MURPHY, [SEAL.]
Its Att'ys-in-fact.

Sealed and delivered in the presence of —
—— ——.

Witness to signature of Anton Johanson:
JNO. F. MAIN.

Approved by
REAVIS, *C. J.*

29 STATE OF WASHINGTON, } *ss:*
County of King, }

—— —— and —— ——, being duly sworn, each for himself deposes and says: I am one of the persons named in and who signed and sealed the foregoing supersedeas bond, as a surety. I am a resident of the State of Washington and not a counselor or attorney at law, sheriff, clerk of the supreme court of said State or other officer of said court, and I am worth the amount specified in the foregoing bond, to wit; the sum of — dollars over and above all just debts and liability and exclusive of property exempt from execution.

—— ——.
—— ——.

Subscribed and sworn to before me this — day of —— 1902.

——— ———,
Notary Public in and for the State of Washington, Residing at Seattle.

On reading and filing the foregoing bond and on motion of the above-named relator's attorneys, it is ordered that said bond as to both the form thereof and the sureties thereon be approved and the same is hereby approved as a supersedeas bond, upon the writ of error mentioned and that upon the filing of said bond, said writ of error operate as a supersedeas in the above-entitled action.

Done at Olympia, in the State of Washington, this — day of January, 1902.

——— ———,
Chief Justice of the Supreme Court of the State of Washington.

30 Endorsement: No. 3670. Supreme court State of Washington. The State of Washington *vs.* Anton Johanson. Bond for writ of error. C. W. Corliss, attorney for defendant and appellant. Office address: 409 Burke bldg. Seattle, Washington. Service

of the within paper on the undersigned, this ——, is hereby admitted. —— ——, attorney for —— ——. Filed Jan. 29 1902 C. S. Reinhart, clerk.

31 In the Supreme Court of the United States, —— Term, 1902.

ANTON JOHANSON, Plaintiff in Error,
vs.
THE STATE OF WASHINGTON, Defendant in Error. } Writ of Error.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable justices of the supreme court of the State of Washington, Greeting:

Because in the record and proceedings as also *of* the rendition of a decree in a plea which is in the said supreme court of the State of Washington, before you or some of you, being the highest court of law or equity of the said State in which a decision came to be had in the said suit between *the* Anton Johanson, defendant and plaintiff in error and The State of Washington, plaintiff and defendant in error, wherein was drawn the question of the validity of a treaty or statute of the United States or right claimed under such treaty or statute and the decision was against their validity and against such right; a manifest error hath happened to a great damage of the said Anton Johanson, plaintiff in error, as by his complaint appears.

We being willing that error, if any hath happened, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf; do command you *that* decree be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, on the 31st day of March next in the said Supreme Court, to be then and there held—

32 That the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct this error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the — day of January, A. D. 1902.

Seal United States Circuit Court, District of Washington, Northern Division.

A. REEVES AYRES,
Clerk of the Circuit Court of the United States for the District of Washington,
By A. REEVES AYRES, *Deputy.*

Allowed by—
—— ——, *Justice.*

33 [Endorsed:] No. 3670. Supreme Court of the United States. Anton Johanson, *vs.* The State of Washington. Writ

of error. C. W. Corliss, attorney for plaintiff in error. Service of the within paper on the undersigned, this 13th day of January, 1902, is hereby admitted. W. B. Stratton, attorney general, by C. C. Dalton, ass't att'y general, attorney for State of Washington. Filed Jan. 29, 1902. C. S. Reinhart, clerk.

34 In the Supreme Court of the United States, October Term, 1902.

ANTON JOHANSON, Plaintiff in Error,
vs.
THE STATE OF WASHINGTON, Defendant in Error. } Citation.

The President of the United States of America *ss* State of Washington, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States in the city of Washington, D. C., on the 18th day of March next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Washington, wherein Anton Johanson is plaintiff in error and you are defendant in error, to show cause, if any there may be, why the decree rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, this 17th day of January, in the year of our Lord one thousand nine hundred and two, and of the Independence of the United States of America, one hundred and fourteenth.

JAMES B. REAVIS,
Chief Justice Supreme Court of Washington.

Attest:

[Seal of the Supreme Court, State of Washington.]

35 [Endorsed:] No. 3670. Supreme Court of the United States. Anton Johanson, *vs.* The State of Washington. Citation. C. W. Corliss, attorney for plaintiff in error. Office address: 409 Burke blg. Seattle, Washington. Service of the within paper on the undersigned, this 17th day of January, 1902, is hereby admitted. W. B. Stratton, attorney general by C. C. Dalton assistant att'y general attorney for State of Washington. Filed Feb. 3 1902. C. S. Reinhart, clerk.

36 In the Supreme Court of the State of Washington.

STATE OF WASHINGTON, Respondent,
v.
ANTON JOHANSON, Appellant. } No. 3670.

I, C. S. Reinhart, clerk of the supreme court of the State of Washington, hereby certify that the above and foregoing is a full, true and

correct transcript of the record in the above-entitled cause, and that, in pursuance of the writ of error heretofore filed in this cause, I herewith transmit to the Supreme Court of the United States the said transcript, together with the original writ of error and the original citation filed in this case.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Olympia, this 10th day of February, 1902.

[Seal of the Supreme Court, State of Washington]

C. S. REINHART, *Clerk.*

Endorsed on cover: File No. 18,465 Washington supreme court. Term No. 282. Anton Johanson, plaintiff in error, *vs.* The State of Washington. Filed March 28th, 1902.